**FARAD CONTINUATION SHEET NO.**
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**APPELLATE SIDE**
**NAGPUR BENCH, NAGPUR**

**CRIMINAL REVISION APPLICATION NO.836/2002**

| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's orders |
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**CORAM : A.P. LAVANDE, J.**
**DATED : 09th AUGUST, 2006**

1. Heard Advocate Shri Jachak for the applicants. None present for the respondents.

2. By this revision application, the applicants challenge the order dated 22.7.2002, passed by the 7th Jt. Civil Judge, Junior Division, Nagpur in Regular Civil Suit No.947/2002 filed by respondent No.1 herein against the applicants and respondent Nos.2 and 3. The application was filed by the applicant under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground that notice under Section 164 of the Maharashtra Co-operative Societies Act (hereinafter referred to as Act) was not given.

This application was rejected by the Trial Court inter alia holding that notice under under Section 164 of the Act is not mandatory.

3. Advocate Shri Jachak for the applicants was called upon to satisfy this Court in respect of maintainability of the revision application after the 1999 amendment to Section 115 of the Code of Civil Procedure. According to Advocate Shri Jachak, if the application is allowed, the proceedings as against the applicants shall come to an end and therefore, the present revision application is maintainable.

4. I am not inclined to accept the submissions of Advocate Shri Jachak, in view of proviso to Section 115 of the Code of Civil Procedure, which reads as under :

> **“Provided that the High Court shall not, under this section, vary or reserve any order made, or any order deciding an issue, in the course of a suit or other**

> **proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."**

5. Bare perusal of the said proviso clearly discloses that the revision is maintainable, if the suit or proceedings come to an end, if the impugned order is set aside. Even if the argument of Advocate Shri Jachak is accepted, at the most proceedings against the applicants will come to an end, but as against remaining defendants the suit shall proceed. Therefore, in my opinion, the present revision is not maintainable after coming into force of 1999 amendment to Section 115 of the Code of Civil Procedure.

6. Advocate Shri Jachak invites my attention to the impugned order, wherein the Trial Court has observed that notice under Section 164 of the

Act is not mandatory. According to Advocate Shri Jachak, the said finding is contrary to law as well as to the ratio laid down by several judgments of this Court. I am not inclined to decide the said issue, in as much as I hold that the revision application is not maintainable. However, the applicants are at liberty to raise the point about non-maintainability of the suit as against the applicants in the written statement, which I am told has not been filed. In case the applicants take plea of non-maintainability of the suit in view of the Section 164 of the Act in the written statement, the Trial Court shall decide the issue uninfluenced by the observations made and findings given in the impugned order.

7. In view of above, the revision application is dismissed as not maintainable, in view of the 1999 amendment to Section 115 of the Code of Civil Procedure. 8. The dismissal of this revision application will not come in the way of

applicants for filing appropriate proceedings, against the impugned order in the event the same are maintainable.

9. The revision application stands disposed of accordingly.

JUDGE

ssw